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IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 2699 of 2002

PETITIONER : Kumar Ram Nagesh aged 56 year son of late Basant Kumar, Caste Ganda (Shhedule caste) working as Assistant Teacher, Primary School, Kunderapani Block office Mainpur, Distt.Raipur.

VERSUS

RESPONDENTS :

1) State of Chhattisgarh Through- The Secretary School Education Department D.K.S. Bhawan G.E. Road Raipur.

2) Commissioner Adim Jati Anusuchit Jati, Pichhda Verg evem Alp - Sankhyak Kalyan wibhag, Raipur.

3) Block office Education Officer Adiwasi Vikas Khand, Mainpur Distt. Raipur (C.G.)

P.R. No. 3/6/02
Presented by Shri H.B. Agrawal
dated 13/12/02

PETITION UNDER ARTICLE 226 OF CONSTITUTIONOF INDIA.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP No. 2699 / **सन्** 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	22-01-2003 Shri H.B. Agarwal, counsel for the petitioner. Shri Ranbir Singh, Govt. Adv. for the State. Though this matter is listed for hearing on the question of admission, on the prayer of learned counsel for the petitioner and with the consent of State counsel, the matter is being disposed of at the admission stage. The grievance of the writ petitioner is to the order of transfer dated 29-10-2002. Cancellation of the transfer order is sought by the petitioner on the ground that as he is suffering from Hyper Tension, Hemipligia & Phuris left arm and left leg and taking treatment at Government Hospital, Dev Bhog, Distt. Raipur, his transfer therefrom will greatly inconvenience to him. Another ground of challenge is that the transfer is in the mid academic session and since no other teacher has been posted in his place, the studies of students of the institution will be affected To begin with, it may be stated that transfer is an incidence of service and person who holds a transferable post cannot object	

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to his transfer, as it is within the jurisdiction of the employer to determine as to where a particular employee should or should not be posted. However, there may be some cases of transfer which may be examined by the Court and these would normally be the cases where an employee has been subjected to frequent transfers or the transfer is by way of harassment or to accommodate a particular person by bringing him back to the place from where that person was transferred and sending out the incumbent who had joined that particular place of transfer of the previous incumbent. Interference may be justified in cases of malafide or infraction of any proposed norms or principles. Where career prospects remain unaffected and no detriment, is caused challenge to transfer ought not to be entertained. Thus the challenge to an order of transfer in the opinion of the Court, is to be considered in the above background.

In the case at hand, the transfer order is assailed on the ground of illness and non-posting of a teacher in the place of the petitioner. Obviously, these are the matters, which could have been brought to the notice of the authorities by way of a

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मामला क्रमांक WP No. 2699/ **सन्** 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

representation. On being asked whether the petitioner had brought these facts to the notice of the appropriate authority, learned counsel for the petitioner drew the attention of the Court to Annexure P-6, being a copy of the representation addressed to a Member of Parliament, which the Court feels was rightly not considered by the department. Learned counsel for the petitioner states that a representation was addressed to the respondent No.2 but that was not entertained. Thus admittedly, a proper representation is not before the appropriate authority.

In the above view of the matter, it is directed that in case the petitioner submits a fresh representation to the respondent No.2 against his transfer, the same shall be considered by the said respondent within a period of two weeks from the date of receipt of the representation. If so advised the petitioner may also attach a copy of the earlier representation. It is, however, made clear that the Court is not expressing any opinion on the merits of the petitioner's case and that representation will have to be decided by the concerned authority on its own merits.

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मामला क्रमांक WP No. 2699 / 02 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

It was then submitted by learned counsel for the petitioner that pending consideration of his representation the order of transfer may be stayed. In reply, learned State counsel drew the attention of the Court to Annexure P-7, which indicates that the petitioner has already been relieved. Hence the question of any interim order, in the circumstances of the case, does not arise. It will, however, be open to the State Government to consider the question of permitting the petitioner to discharge his duty at the present place where he was posted till the end of the academic session.

With aforesaid observations and direction, this petition stands disposed of. Consequently M.W.P. No.1740/2002 for interim relief & I.A. No. 8381/2002 for urgent hearing also stand disposed of.

Certified copy as per Rules.

Sd/-
P.C. Naik
Judge

Roshan